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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

COMCAST CELLULAR COMMUNICATIONS, INC.

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January 11, 1999

SUMMARY

Comcast strongly supports the Commission's interim action providing Commercial Mobile Radio Service providers with a safe harbor percentage to apply for mandatory universal service contribution reporting. This interim action reduces the glaring inequity among CMRS providers' contributions that has persisted for over a year as carriers struggled, without the benefit of Commission guidance, to estimate universal service reporting information under the "good faith" approach.

Any permanent mechanism should promote competitive neutrality by applying consistently among CMRS carriers. Importantly, any permanent mechanism also should promote administrative simplicity and certainty both from the standpoint of the Commission and CMRS providers. Consistent with Comcast's prior filings addressing this matter, we ask the Commission to adopt either a fixed charge on a per-subscriber basis or a fixed percentage mechanism for CMRS carriers to apply to their customer or revenue base. In either event, the Commission also will need to provide guidance on what constitutes "end-user telecommunications revenue" as well as how CMRS carriers are to back-out non-telecommunications services provided as part of a bundled CMRS service package.

The Commission has adopted competitive neutrality as one of several key principles upon which to base policies for the preservation and advancement of universal service. Given the centrality of competitive neutrality to the program, the distinct technological and operational aspects of the way wireless systems operate and wireless services are delivered must be considered in analyzing how CMRS carriers contribute to the program. Any permanent

mechanism must foster equitable contribution assessments among wireless carriers competing in common markets.

Because the good faith approach permits CMRS carriers to use virtually any method to allocate their end-user revenues, it may result in underreporting and underestimation of assessable revenues. Even with the best of good faith estimates, it is inevitable that carriers competing in the same geographic markets will derive different estimates and contributions. Thus, the Commission should eliminate reliance on the good faith estimate approach as a feature of universal service reporting for CMRS and replace it with a simpler, more CMRS-friendly reporting approach such as a fixed percentage or a fixed charge methodology.

Specifically, the Commission should consider adopting a fixed assessment on wireless providers because a fixed charge would: (1) produce consistent results among competing providers; (2) eliminate the need for many "good faith" assumptions by various carriers; (3) become vastly simpler to administer; (4) provide greater certainty and predictability for both wireless contributors and the Commission; and (5) require fewer resources than any alternative methodology.

If the Commission determines that a fixed charge approach is superior to other alternatives, then it already has a model it could look to for establishing a per subscriber charge: the annual regulatory fee program. Because the Commission is already familiar with assessing fixed charges based on a carrier's number of lines or number of subscribers, CMRS carrier contribution amounts could be calculated with relative ease using information already collected on the Universal Service Worksheet. Moreover, a decision to adopt fixed charges for wireless carriers would not be inconsistent with prior determinations that carriers should report and contribute on the basis of their telecommunications revenues.

Although a fixed charge would simplify CMRS universal service reporting and foster greater certainty and consistency, a fixed percentage solution with a reasonable safe harbor is the only remaining possibility that incorporates the critical elements of consistency and certainty. A fixed percentage method – given the clarification of necessary assumptions – could reduce competitive inequities among wireless carriers as compared to the use of differing allocation assumptions and methodologies. It is reasonable for the Commission to use data submitted for purposes of the DEM weighting program as a proxy for the percentage of interstate revenues generated by broadband cellular and PCS providers.

Any proxy allocator for wireless that is based on a percentage of interstate revenues must take into consideration not only the category of CMRS carrier, but the relevant markets in which the carrier operates. The Commission should require that each carrier file a Worksheet for each Major Trading Area ("MTA") in which it operates. By this requirement the Commission can assure that carriers review their information using common markets. CMRS carriers would always have the option of filing market-specific waivers of the interstate percentage proxy whenever it believed a waiver for a particular MTA would be appropriate or necessary.

Another approach to the simplifying wireless carrier reporting of jurisdictional revenues identified in the *Further Notice* is the development of a series of "simplifying assumptions." While this approach might offer some modest improvement as compared to a good faith estimate, the process of developing and testing assumptions to be applied to periodic wireless traffic studies would be costly, time consuming and burdensome, both for the CMRS industry and for the Commission. In the end, any simplified methodology established as a permanent mechanism to measure interstate traffic would not be any more precise than either the fixed charge or fixed percentage alternatives.

The *Further Notice* also solicits comment on other problems posed for CMRS by the current universal service reporting and assessment process. Under any revenue-based reporting system, it will still be necessary for the Commission to clarify what constitutes wireless "telecommunications revenues." A hallmark of the way CMRS carriers offer service is via integrated service packages that bundle telecommunications service with equipment and information services. The Commission must provide some guidance as to whether wireless providers should back-out non-telecommunications features and equipment on some uniform basis. Comcast suggests that carriers estimate the standalone fair market value of bundled services and deduct non-telecommunications services from applicable service plan revenues to arrive at a telecommunications revenue figure.

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COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits these comments in response to the *Further Notice of Proposed Rulemaking* on contributions by Commercial Mobile Radio Service ("CMRS") providers to the Universal Service Fund ("USF").[1] Comcast strongly supports the Commission's interim action, which reduced the glaring inequity among CMRS providers' contributions that had persisted for over a year. Now the Commission must act quickly and decisively to adopt a permanent mechanism for wireless providers to use to determine their federal universal service contribution amounts. In considering an appropriate mechanism, the Commission should promote competitive neutrality among wireless carriers by adopting a mechanism that is applied uniformly among these carriers, and should seek administrative simplicity both from the standpoint of the Commission and CMRS providers.

In its *Further Notice*, the Commission proposed various mechanisms and conventions that could be used to establish CMRS carrier contributions to the universal service program.[2] Among the options raised is an administratively simple fixed charge approach that would avoid

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[1] *See* Federal-State Joint Board on Universal Service, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 98-278, rel. October 26, 1998 ("*Memorandum Opinion and Order*" and "*Further Notice*").

[2] *Id.* at ¶¶ 16-39.

disparities among competing carriers while providing consistent and adequate funding for the federal universal service program. Another option is a fixed percentage mechanism that would provide the Commission and CMRS carriers a degree of certainty but would require a higher level of Commission involvement in its administration. The remaining option — adopting a methodology to measure CMRS traffic — has substantial drawbacks in comparison to the other alternatives. It would raise carriers' administrative costs and require a host of regulatory assumptions that may lead to competitive inequities. Consistent with Comcast's prior filings addressing this matter, we ask the Commission to adopt either a fixed per subscriber charge or a fixed percentage mechanism for CMRS carriers to apply to their customer or revenue base. In either event, the Commission also will need to provide guidance on what constitutes "end-user telecommunications revenue" as well as how CMRS carriers are to back out non-telecommunications services provided as part of a bundled package.

I. INTRODUCTION AND BACKGROUND

Comcast appreciates the Commission's decision to provide interim guidelines to assist providers in determining their federal universal service contribution amounts. Comcast began seeking the Commission's guidance and assistance in formulating a consistent methodology almost immediately after issuance of the Commission's Order adopting the USF Worksheet, Form 457. In the intervening year, Comcast has urged the Commission to recognize the competitive inequities and other problems which result from the imposition of a strictly landline-based telephone model for determining universal service contributions from the wireless industry, whose technologies, business markets and practices, and services differ markedly from those of traditional landline common carriers. Comcast welcomes the opportunity to comment on several alternative mechanisms which might be used by wireless universal service contributors.

The relevant differences between CMRS carriers and landline local exchange or interexchange carriers are numerous. While over 94 percent of the households in the United States have landline telephones and subscribe to local exchange service — with access to interexchange service — the customer penetration rate for CMRS nationwide is hovering at about 20%.[3] In light of the intense competition within CMRS markets, CMRS has a much greater degree of customer churn than the landline local exchange and interexchange markets. In the competitive CMRS market, services and equipment are bundled into unique service plans that constantly evolve to respond to customers' needs and desires.[4] Unlike local exchange

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[3] *See* Cellular Telecommunications Industry Association, *Semi-Annual Data Survey*, <http://www.wow-com.com/statsurv/survey/datasurvey-index.html> (estimating that there are over 60,000,000 cellular, PCS and ESMR subscribers in the United States). The Central Intelligence Agency World Fact Book estimates the U.S. population at approximately 268,000,000. *See* Central Intelligence Agency, World Fact Book - 1997, <http://www.cia.gov/cia/publications/factbook/country-frame.html>.

[4] The Commission in fact has recently initiated a rulemaking proposing to permit landline carriers to bundle regulated services and non-regulated services and equipment, a practice the Commission has acknowledged has long been not only permitted for, but has become a hallmark of, CMRS service providers. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, *Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-61 and 98-183, FCC 98-258, rel. October 9, 1998. While Comcast did not comment in this proceeding, it agrees with the many comments filed indicating it is premature to liberate local

carriers who have relatively constrained local calling areas, the geographic scope of most CMRS "local" calling areas has continually expanded and, under recently introduced "One Rate" plans, the scope of local calling is regional, national, and in some cases international.

These characteristics and market dynamics are sufficiently distinct as to require a specific analysis of how a universal service assessment process applied to all telecommunications services will impact CMRS services. This analysis, which the Commission has initiated in this proceeding, should result in sensibly tailored regulation of the CMRS industry's contributions to federal universal service.

In its *First Report and Order* in the Universal Service proceeding, the Commission determined that contributions to the federal universal service support mechanisms would be based on combinations of each carrier's intrastate, interstate, and international end-user telecommunications revenues.[5/] While seemingly straightforward, the difficulties with this approach for wireless carriers became evident when the Commission released its Universal Service Worksheet. The Worksheet required contributors to list their revenues broken down into numerous source categories, and to list the percentage of each revenue category representing interstate and international end-user telecommunications revenues (as opposed to intrastate

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exchange carriers until there is real, broad-based facilities competition. CMRS has not yet created greater local loop competition — at best lower CMRS rates are providing competition to interexchange carriers.

[5/] *See* Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 9203 (1997) ("*First Report and Order*"). Unlike contributions for the high cost/low income fund (which is based upon the end-user *interstate* and international telecommunications revenues of a contributor), contributions for the schools and libraries fund are based on international, interstate and *intrastate* end-user telecommunications revenues.

telecommunications revenues). These categories and characterizations were and are entirely foreign to wireless providers.[6] As the *Further Notice* observes, a number of wireless providers and wireless trade associations immediately requested clarification on how entities unable to derive this data directly from their books should calculate the required information.

In its *Second Report and Order,* the Commission offered some guidance on the issue of allocating revenue to interstate and intrastate jurisdictions.[7] The Commission concluded that contributors unable to derive interstate revenues from their books of account could provide "good faith" estimates of the jurisdictional allocation of their telecommunications revenues.[8] In addition, the Commission stated that contributors could derive their estimates using any method that they, in good faith, believed would yield a "reasonably accurate result."[9] Thus, the Commission declined to prescribe any particular method for wireless carriers engaging for the first time in the exercise of identifying and classifying end-user telecommunications revenues.

Several wireless providers, including Comcast, sought reconsideration of this decision, arguing that an approach based only on good faith estimates would result in inequities in

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6/ There are several additional areas of continuing confusion for CMRS operators, including how to "back-out" bundled non-telecommunications services offered in a service package or plan.

7/ *See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12444, 12453 (1997) ("*Second Report and Order*").

8/ *Id.*

9/ *Id.*

amounts paid pursuant to the Worksheet calculations.[10] As Comcast explained, there are a wide variety of potential approaches that might comport with a good faith estimate, but would yield inconsistent results and outright inequities in payment obligations among CMRS carriers competing in the same market.[11] In an ongoing effort to assist the Commission in grappling with these issues, Comcast had a series of meetings with Commission staff.[12] Comcast's consistent goal has been to work with the Commission toward the establishment of an appropriate and competitively neutral CMRS assessment methodology. A lesser methodology will merely foster unpredictability and unfairness in the administration of the federal universal service program. In a highly competitive marketplace such as the wireless marketplace, clear guidance and reliable assessment procedures are even more important than in industries where less intense competitive rivalry occurs.[13]

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[10] *See* Petition for Reconsideration of Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, filed September 2, 1997.

[11] *Id.* at 9-10.

[12] *See, e.g.*, Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 19, 1998; Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 23, 1998; Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated September 25, 1998.

[13] Comcast, for example, is one of six facilities-based CMRS competitors active in the greater Philadelphia area. Further, the Commission itself has recognized the intensifying competition among facilities-based CMRS carriers in its most recent Annual Report on CMRS competition. *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Third Report*, FCC 98-91, released June 11, 1998 (concluding that competition in the CMRS industry has grown more than it has ever before and that the signs of

The *Memorandum Opinion and Order and Further Notice* take encouraging and important steps to address Comcast's concerns. By adopting interim guidelines for Worksheet reporting, the Commission has recognized that good faith estimates cannot ensure reasonably equitable calculations of contribution amounts.[14] The safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent marks an important move towards resolving these lingering concerns.[15] As the Commission weighs several options for adoption as a permanent and competitively neutral allocation mechanism for CMRS carriers, Comcast provides its perspective on the relative merits of the proposed alternatives.

II. ANY PERMANENT MECHANISM MUST ENSURE COMPETITIVE NEUTRALITY AMONG COMPETING CMRS CARRIERS.

The Commission has correctly endorsed the Joint Board's recommendation to adopt competitive neutrality as one of several key principles upon which to base policies for the preservation and advancement of universal service, and neutrality is one of the Commission's stated policy goals.[16] The Commission defines competitive neutrality as "rules [that] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor

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competition are clear). In contrast, by the Commission's own measures, there are continuing barriers to entry in the landline local telephone markets. According to a report prepared by the Industry Analysis Division, incumbent LECs accounted for 96.8% of all local service revenues in 1997. *See* Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, report entitled *Local Competition*, at 12 (rel. Dec. 4, 1998).

14/ *Memorandum Opinion and Order* at ¶ 1.

15/ *Id.* at ¶ 13.

16/ *First Report and Order*, 12 FCC Rcd at 8801.

disfavor one technology over another."[17] In furtherance of this core principle, Commission rules and procedures must take into account the unique market, technical and operational characteristics of different technologies. Any failure to do so may result in uniform rules that have a disproportionately adverse impact on non-landline carriers.[18]

Given the centrality of competitive neutrality to the universal service program, the distinct technological and operational aspects of the wireless marketplace must be considered not only when carriers seek to draw funds from the program, but also when the Commission is analyzing how carriers contribute to the funds. The results of a CMRS-specific analysis may dictate a CMRS-specific approach.

As the Commission has observed, the current universal service jurisdictional allocation of revenue is unworkable as applied to wireless. Wireless carriers neither book their revenues and investments either in accordance with the Commission's Uniform System of Accounts nor separate them in a fashion similar to traditional landline local exchange carriers.[19] The

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[17] *Id.*

[18] *See e.g.,* Michael K. Powell, Commissioner of the Federal Communications Commission, *Bewitched, Bothered and Bewildered,* Remarks Before the Federal Communications Bar Association, dated October 28, 1998, at 5-6 (discussing the need to revalidate the concept of common carrier regulation, questioning the Commission's interpretation of "non-discrimination" as requiring outright regulatory parity, and inquiring about the artificial geographic boundaries used to shape telecommunications policy).

[19] Jurisdictional allocation of traffic or the revenue derived from telecommunications traffic in the landline world is, if not precise, at least well defined. The "interstate" portion of interexchange carrier revenue is derived from quarterly traffic studies performed by interexchange carriers who are required under the terms of incumbent LEC access tariffs to develop a percentage of interstate usage to report to the incumbent LECs from whom they purchase local access. This traffic study can be performed relatively simply by matching

Commission also realizes that CMRS carriers lack the ready ability to distinguish between intrastate and interstate calls, and that this is a distinction that cannot practically be made.[20]

The Commission has recognized that interstate/intrastate distinctions are not meaningful to the manner in which wireless systems operate or the way wireless services are sold. In its *Further Notice*, for example, the Commission acknowledges that CMRS providers operate without regard to state boundaries because their service areas do not correspond to state lines or other geographic boundaries.[21] A wireless caller's location may shift jurisdictionally mid-call; the point of origin for incoming calls is not readily captured by CMRS billing and operations systems; and the requisite information for classifying roaming calls is uncertain and in the control of a third party.[22] The *Further Notice* also appropriately seeks comment on other CMRS-specific issues posed by the universal service process. Both the identification of CMRS carrier end-user telecommunications revenue and the identification of telecommunications

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the calling number to the called number and classifying the jurisdiction of the call.

The interstate allocation for incumbent LECs is set by Commission rule 47 C.F.R. § 36.154(f). The Commission directs the application of a Subscriber Plant Factor to perform jurisdictional separations. This "SPF" was frozen in 1981 and then transitioned between 1985 and 1993 to 25% interstate, with the remaining 75% allocated to intrastate. *See* Monitoring Report, CC Docket No. 98-202, released December 22, 1998, Prepared by Federal and State Staff for the Federal-State Joint Board in CC Docket No. 96-45, at 3-1.

[20] *Memorandum Opinion and Order* at ¶ 6.

[21] *Id.*

[22] *See* Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 19, 1998.

revenue with a CMRS bundled service offering are important unresolved issues.[23]

These wireless service characteristics demonstrate that the Commission must do more than direct CMRS carriers to make their best estimates to derive jurisdictional information. There are simply too many variables for that approach to yield competitively neutral results. Acknowledging that wireless services manifest unique competitive and operational attributes may warrant distinct universal service reporting processes, and such unique treatment does not compromise the Commission's commitment to competitive neutrality. On the contrary, it enhances both predictability and stability in universal service administration without putting wireless carriers through the complex, expensive, time consuming and ultimately subjective exercise of allocating their end-user telecommunications revenues.

III. THE COMMISSION MUST WORK TOWARD A PERMANENT MECHANISM THAT IS APPLIED UNIFORMLY BY ALL COMPETING CARRIERS IN COMMON MARKETS.

In addition to promoting the goals of competitive neutrality within the universal service program generally, any permanent reporting mechanism must result in equitable contribution allocations as among wireless carriers competing in common markets. The good faith estimate approach yields neither consistency nor any check on the ability of carriers to manipulate data that impacts their contribution amounts.

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[23] Similar to the jurisdictional allocation conundrum, CMRS carriers, lacking guidance from the Commission, have likely taken different approaches to these issues, which results in additional competitive inequities.

For these reasons, Comcast supports the Commission's decision to eliminate reliance on the good faith estimate approach as a permanent feature of USF reporting for CMRS. As the Commission recognized in its *Further Notice*, allowing carriers to rely on good faith estimates on a permanent basis may result in inequities in payment obligations.[24/] Because the good faith approach fails to prescribe any method by which contributors must allocate their end-user revenues, it may result in systematic underreporting and underestimation of assessable revenues.

The Commission's own experience with the good faith estimate approach is demonstrative. Wireless providers using the good faith estimate approach have reported interstate revenue allocation amounts that varied by more than 300 percent. The *Further Notice* observes that some wireless providers reported an interstate revenue allocation of 7 percent, whereas others reported an interstate revenue percentage as high as 28 percent.[25/] Providers that systematically underreport their end-user interstate telecommunications revenues have an unreasonable and unjustified advantage as compared to CMRS carriers reporting higher percentages of interstate telecommunications revenue. This result is not competitively neutral.

Additionally, the good faith estimate approach does not and will not provide contributors with sufficient certainty as to the appropriate amount of their federal contribution obligations.[26/] The lack of guidance inherent in the good faith estimate approach may have resulted in inadvertent underreporting and contribution inequities. Disparities in relative contribution

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24/ *Further Notice* at ¶¶ 10, 17.

25/ *Id.* at ¶ 10.

26/ *Id.* at ¶ 17.

amounts are especially harmful in highly competitive markets, such as the wireless marketplace. The Commission should, therefore, adopt a reporting and assessment solution for wireless that allows minimum divergence.[27/]

In addition, to the extent the Commission has permitted Worksheet filings based upon licensee name rather than relative market, and has not taken into account the various configurations of markets licensed to competitors, then contributors with large geographic footprints have had the incentive and opportunity to average down their reportable interstate revenues by reporting interstate end-user telecommunications revenues on a company-wide basis.[28/] As discussed below, any permanent CMRS allocation and assessment mechanism must eliminate the possibility of inequitable universal service contribution obligations by providers operating in common markets. Disparities in contribution calculations distort competition in the

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[27/] This also means, as discussed *infra*, that the Commission should address and define in greater detail what CMRS revenues are to be included or excluded from end-user telecommunications revenues reported by CMRS carriers. This is particularly important in that CMRS carriers offer bundled service packages that include telecommunications services, customer handsets and information services. Some of these features or services do not have a standalone price and the Commission has not indicated a preference for any particular valuation methodology. This creates an additional potential for competitive inequity among competing CMRS providers, as well as between CMRS and non-CMRS contributors, the latter generally not confronting the issue of CPE and information service bundling.

[28/] The USF Worksheet instructions call for licensee-specific reporting which only exacerbates this problem as some carriers are licensed nationwide as a single licensed entity, while others are licensed on an MTA, BTA, MSA or RSA market-by-market basis. Even assuming the Commission adopts its fixed percentage proposal, licensee specific universal service Worksheet reporting allows a carrier's corporate structure to materially affect its potential liability to the program. This issue does not present itself with respect to wireline local exchange carriers, first, because each are separately certificated by state, and second, because there is no effective competition in that marketplace which would yield a "disparity" to be concerned about.

wireless marketplace and lead to further confusion for consumers facing different charges from different carriers serving the same market. This issue will not present itself if a fixed charge on a per-subscriber basis is adopted, but will likely have to be addressed if a fixed percentage is adopted. If the latter approach is ultimately chosen, the MTA is the most common unit for CMRS carriers' universal service reporting. This approach will ensure that all CMRS carriers evaluate relevant reporting information using the same basic markets.

IV. A FIXED CHARGE IS AN ADMINISTRATIVELY SIMPLE AND EQUITABLE SOLUTION FOR DETERMINING CONTRIBUTION AMOUNTS.

In its *Further Notice*, the Commission requests comment on whether it would be competitively neutral, equitable, and economically efficient to require wireless providers to contribute to the universal service support mechanisms on the basis of a fixed charge, such as flat fee per voice grade access line or voice grade equivalent, rather than as a percentage of their end-user telecommunications revenues.[29/] The Commission should seriously consider adopting a fixed assessment on wireless providers because it would: (1) produce consistent results among competing companies; (2) eliminate the need for many "good faith" assumptions by various carriers; (3) become vastly simpler to administer; (4) provide greater certainty and predictability for both wireless contributors and the Commission; and (5) require fewer resources than any alternative methodology. In the absence of a fixed assessment, a methodology using a fixed percentage — with the same types of attributes that minimize the necessary range of assumptions — is the only other alternative that can achieve the goals of certainty and consistency.

[29/] *Further Notice* at ¶ 26.

A. The Commission Should Consider a Fixed Charge Calculated on a Per-Subscriber Basis.

Any permanent allocation mechanism for CMRS must foster predictability and competitive neutrality. A simple formula based upon the number of each CMRS carrier's subscriber units in service would satisfy both goals; it would eliminate the need for any assumptions and foreclose the opportunity for manipulation by subject CMRS carriers. If the Commission determines that a fixed charge approach is superior to other alternatives, then the Commission already has a model it could look to for establishing a per subscriber fee: the annual regulatory fee program.

Under the regulatory fee program, Congress requires the Commission to collect a specific amount in regulatory fees which the Commission then apportions among the various services it regulates.[30/] This apportionment is accomplished by reviewing the relative costs of regulation for each service as established by the Commission's cost accounting system, and then applying that number to the number of feeable units in each service.[31/] As a general proposition, the total

[30/] *See, e.g.,* Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, MD Docket No. 98-36, FCC 98-115, rel. June 16, 1998. For 1998, Congress directed the Commission to collect $162,523,000 in regulatory fees. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, 11 Stat. 2440, 2508 (1997); 47 U.S.C. § 159(a)(2).

[31/] For example, Congress, in establishing the regulatory fee program, set fees for wireless providers on a per subscriber basis, for interexchange carriers on a presubscribed access line basis, and for local exchange carriers on an access line basis. *See* 47 U.S.C. § 159(g). The Commission also has recognized the need to tailor the collection of regulatory fees to specific industries when, for example, it changed the collection methodology for interexchange carriers and local exchange carriers from the Congressionally-set basis to assessing regulatory fees using a gross revenues methodology. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, MD Docket No. 95-3, FCC 95-227, rel. June 19, 1995 at ¶¶ 118 -

regulatory fee recovery assigned to a specific service is the percentage of Commission costs attributable to that service multiplied by the dollar amount set by Congress. Individual carrier fee amounts are then determined by dividing this result by a service's total number of feeable units.

Applying this conceptual model to CMRS universal service contributions, a fixed charge amount could be determined by calculating the total amount of support necessary to be recovered from all universal service contributors as a whole based on gross telecommunications revenues as reported by all contributing carriers. The Commission then could easily determine that portion of the total amount of contributions required from wireless providers by comparing the gross telecommunications revenue reported by all contributors to the gross telecommunications revenue reported by CMRS carriers, thus establishing a ratio.[32/] The Commission would then calculate the fixed charge necessary to cover the amount of universal service support required from wireless providers according to the total number of subscriber units or telephone numbers in use.[33/] Thus, each wireless provider would be assessed a fixed charge for each of its subscribers without any need for it to differentiate charges jurisdictionally (since it would be

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[32/] By definition, such ratio would assume a similar interstate/intrastate traffic pattern as existing in the telecommunications industry as a whole.

[33/] CTIA does a semi-annual survey of the CMRS industry for this information and makes the aggregate estimates publicly available. The most recent survey, dated June 1998, is currently available. The CTIA website identifies the current number of U.S. wireless subscribers. The Commission also could modify the USF Worksheet to require CMRS carriers to provide a per subscriber unit count to be used by the USF Administrator on a confidential basis.

imputed from the ratio). A per unit assessment also could yield significant benefits in terms of transparency should the Commission proceed to adopt proposals in its pending Truth-in-Billing rulemaking.[34]

In the *Further Notice*, the Commission noted that the amount of a flat charge might need to vary according to the type of carrier on which it is assessed.[35] The logic for varying a fixed charge within classifications of CMRS carriers is not apparent. If, for example, the fixed charge is based upon the number of active subscriber units, as is the Commission's annual regulatory fee assessment on CMRS, the charge would not need to be adjusted to account for differing circumstances between cellular and analog SMR so long as each carrier is classified as CMRS. This highlights a benefit of a fixed charge versus a safe harbor percentage, which the Commission has concluded should vary within particular CMRS service classifications because the jurisdictional composition of traffic for several categories (broadband PCS, SMR and paging) was believed to be sufficiently distinct.[36]

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[34] The Commission has proposed that carriers demonstrate they are not "overrecovering" their costs from their subscribers, and the underlying per unit charge would be readily identifiable. *See* Truth-In-Billing and Billing Format, *Notice of Proposed Rulemaking*, 13 FCC Rcd 18176, 18190 (1998). There should be no additional concern that fixed charge assessments will be passed onto customers any more than under any other assessment formula. Wireless carriers are electing to pass at least some portion of their assessments to their customers because the universal service charge was new to the wireless industry. Any concerns as to the characterization of the charge can be addressed separately. Ultimately, however, it is reasonable to expect that wireless competition will reduce prices for services to offset any USF pass-throughs and may even affect the amount passed-through to subscribers.

[35] *Further Notice* at ¶ 26.

[36] For instance, the Commission adopted an interim interstate safe harbors of 12 percent for paging providers and one percent for Specialized Mobile Radio providers. *See*

Similarly, Comcast does not recommend Commission adoption of a per line assessment, for the same reasons articulated by the Commission in the Universal Service *First Report and Order*.[37] A per subscriber unit assessment is far less complex and less subject to gaming by carriers.

B. A Fixed Charge Would Be Competitively Neutral and Simple to Administer.

A fixed charge approach like that proposed in the *Further Notice* would be simple to calculate and administer. Because the Commission is already familiar with assessing fixed fees based on a carrier's number of lines or number of subscribers, contribution amounts could be calculated with relative ease using information already collected by the Commission on the Universal Service Worksheet.[38] A fixed charge approach would also create consistency and predictability among contribution amounts. As a result, a fixed charge approach would reduce

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Memorandum Opinion and Order at ¶¶ 14-15.

[37] *First Report and Order*, 12 FCC Rcd at 9210 (finding that per-line assessments would require the adoption and administration of difficult equivalency rations). Any flat fee "per voice grade access line or voice grade equivalent" would needlessly plunge the Commission into determining equivalency ratios. While the Commission has successfully computed these types of ratios in the past, *see* Access Charge Reform, *Second Order on Reconsideration and Memorandum Opinion and Order*, 12 FCC Rcd 16606, 16618 (1997), as to CMRS it would be far simpler and competitively neutral to use an active subscriber unit count.

[38] Much of the information necessary to calculate the fixed charge is already collected via the USF Worksheet and other telecommunications carrier reporting forms. A fixed charge approach could assist the Commission in its efforts to consolidate the administrative filings required for support of Telecommunications Relay Services, local number portability and numbering administration. *See generally* 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability and Universal Service Support Mechanisms, *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket No. 98-171, FCC 98-233, rel. September 25, 1998.

the administrative burdens for the Commission and wireless carriers associated with other proposed methodologies.

As Comcast has argued, the confusion and uncertainty associated with other methodologies has adverse competitive implications.[39] A fixed charge would eliminate competitive inequities associated with widely varying results from inconsistent assumptions in the methodologies used. It would merely require the Commission or its USF Administrator to identify the gross amount to be collected, determine the appropriate relative share of the total to be collected within the CMRS industry as a whole, and announce the per subscriber unit figure using industry estimates of active, telephone numbers or subscribers.[40]

A fixed charge assessed against each CMRS provider's subscriber base would promote competitive neutrality. Because each CMRS provider competing in the same market will have the same assessment per subscriber, the universal service assessment becomes a relatively neutral element in the carrier-to-carrier competition for customers. Importantly, a fixed charge does not bestow an unwarranted competitive advantage on national, regional or strictly local operators. It would also eliminate the need for the Commission to entertain waivers because no assumptions need be made about any CMRS carriers' operations under a fixed charge contribution regime.

Just as important, other industry segments would not be harmed by a Commission

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[39] *See* Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 19, 1998.

[40] Each CMRS provider would then take the fixed amount and multiply it across its entire subscriber base, without differentiating classes of subscribers, and remit that amount to the USF Administrator on the same timetable as other contributors.

decision to extend a fixed charge approach to the wireless industry. Central to this approach is the notion that the CMRS industry would be assessed the same overall contribution amount as it currently pays. It would simply be paid based on number of subscriber units rather than through the complicated exercise of jurisdictionally allocating revenues.

Significantly, other parties agree that a fixed charge approach for universal service assessment may have numerous advantages. For instance, the United States Telephone Association ("USTA") recently submitted an alternative proposal for universal service support that includes a fixed surcharge as a feature to support the high cost program.[41/] USTA's plan would fund the high cost program with a surcharge on the total combined interstate/intrastate retail bill of every telecommunications carrier. According to USTA, this surcharge contribution mechanism would ensure fairness and competitive neutrality, and would eliminate the opportunity for strategic underreporting.[42/] While Comcast does not endorse the specifics of the USTA plan, it does agree that a fixed charge brings attractive attributes as a consistent, predictable and administratively simple solution, particularly as to wireless carriers.

Similarly, the Universal Service Federal-State Joint Board, in its most recent recommendations to the Commission, has called for consideration of a non-jurisdictional fixed charge as an alternative approach to assessing mandatory universal service charges on a revenue

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41/ *See* Letter from John W. Hunter, United States Telephone Association, to Magalie R. Salas, FCC, dated September 18, 1998.

42/ *Id.*

basis.[43] This is an important validation of the concept. It also suggests that the Joint Board, in light of the experience all parties have had in dealing with the complexities of the program's implementation, is now willing to consider alternatives to a strict revenue-based approach.

C. Prior Commission Decisions Do Not Preclude Adoption of a Fixed Charge.

The Commission asks whether adoption of a fixed charge for wireless universal service reporting would be inconsistent with prior Commission decisions.[44] The Commission is apparently concerned that departing from the revenue-based approach previously adopted by the Joint Board and the Commission — for the purpose of assessing a single industry segment (*i.e.* CMRS) — might constitute a major change in the overall program.[45]

A decision to adopt fixed charges for wireless would not be inconsistent with prior determinations that carriers should report and contribute on the basis of their telecommunications revenues. CMRS carriers still would file USF Worksheets reporting non-jurisdictional revenue

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43/ *See* Federal-State Joint Board on Universal Service, *Second Recommended Decision*, CC Docket No. 96-45, FCC 98J-7, ¶ 63, rel. November 25, 1998.

44/ *See Further Notice*, ¶ 26. *See also* Federal-State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87, 496 (1996) ("We reaffirm the Commission's statement in the NPRM that such mechanisms [as per-minute or per-line based measures] would require the Commission to adopt and administer difficult 'equivalency ratios' for calculating the contributions of carriers that do not offer services on a per-line or per-minute basis."); *First Report and Order*, 12 FCC Rcd at 9210 (affirming the Joint Board's recommendation to reject per-line or per-minute based measures and also finding "that these approaches are not competitively neutral because they may inadvertently favor certain services or providers over others if the 'equivalency ratios' are improperly calculated or inaccurate.").

45/ By soliciting comment on the appropriateness of a fixed charge, the Commission has satisfied any Administrative Procedures Act consideration by ensuring that interested parties, including those only indirectly affected by the proposal, have full notice and an opportunity to comment on the adoption of fixed charge assessments for wireless operators.

so that the CMRS industry's relative share of the overall universal service contribution can be readily determined. Thus, while each CMRS carrier would contribute according to charges calculated on a per subscriber basis, the CMRS industry overall would still have its contributions assessed on a revenue basis. The program changes necessary to accommodate this are in line with the changes involved in the Commission's proposal to adopt an assumption for a 15% interstate safe harbor for wireless carriers.

Although the Commission adopted the Joint Board's recommendation to base assessments on revenues, neither the Joint Board nor the Commission specifically considered whether a *per-subscriber* charge might be less burdensome for particular categories of carriers, such as in the wireless industry.[46] Rather, both the Joint Board and the Commission rejected a *per-line* assessment approach based upon concerns about the complexity of determining line equivalency ratios. The only portion of the *Recommended Decision* or the *First Report and Order* to address unique wireless implementation issues was strictly limited to the legal question of CMRS carrier

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[46] This omission was unfortunate as the record contained comments from a number of CMRS providers informing the Commission of the difficulties associated with a jurisdictionally based revenue assessment for CMRS carriers. *See*, *e.g.*, Comments of American Personal Communications at 7, CC Docket No. 96-45, filed December 19, 1996; Comments of Sprint Spectrum L.P. at 9, CC Docket No. 96-45, filed December 19, 1996; Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association at 7-9, CC Docket No. 96-45, filed December 19, 1996. Sprint PCS specifically advocated a per subscriber charge in its comments and reply comments to the Joint-Board Recommended Decision. Comments of Sprint Spectrum, L.P. at 10, CC Docket No. 96-45, filed December 19, 1996 ("Unlike the per-line or per-minute methods that the Recommended Decision rejects, a per-subscriber charge does not require the adoption of complex equivalency ratios . . ."); Reply Comments of Sprint Spectrum, L.P. at 9, CC Docket No. 96-45, filed January 10, 1997.

obligations to contribute to state universal service programs.[47]

The Commission initially concluded that a jurisdictionally based net end-user telecommunications revenue contribution mechanism would be relatively easy to administer.[48] Experience shows this is not the case as to CMRS. Based on that experience, the Commission should adopt an assessment formula for CMRS that is straightforward and simple to administer.

Comcast recognizes that a fixed charge mechanism applied to wireless providers would result in a CMRS assessment formula distinct from that of landline carriers. However, the Commission consistently has recognized that unique operational characteristics of certain types of providers may warrant somewhat different regulatory treatment.[49] For example, the Commission maintains industry-specific methods for the assessment of annual regulatory fees. While wireless providers are assessed contribution amounts based on a flat fee assessment per 1,000 subscriber units, landline interexchange carriers are assessed an amount per dollar of revenue.

47/ *See First Report and Order*, 12 FCC Rcd at 9181.

48/ *See Id.* at 9211.

49/ There are many recent examples of the Commission determining that different market positions or technologies required a different approach to regulation: rural v. nonrural LECs in universal service; Commission implementation of wireline and wireless number portability. *See, e.g., First Report and Order*, 12 FCC Rcd at 8926-8947; Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996).

The net result need not be that the wireless industry as a whole contribute any less to the program than it does currently. Rather, the method by which the collective CMRS industry shares the federal universal service obligation among individual CMRS carriers should be refined to promote both simplicity and competitive neutrality among competitors.

Comments by wireless providers in numerous other proceedings before the Commission, such as the implementation of the 1996 Act's Customer Proprietary Network Information provisions, implementation of number portability, and interstate geographic rate averaging, demonstrate that imposing uniform regulations on all telecommunications carriers has perverse effects on innovative wireless providers.[50/] "One-size-fits-all" rules constrain CMRS providers to operate in ways that are often inconsistent with their operational and market characteristics and, therefore, unwittingly creating barriers to direct competition with landline local exchange services.[51/] Regulations applicable to different types of providers should, therefore, be appropriately tailored to recognize these key differences. This proceeding suggests that the Commission is prepared to make necessary distinctions among services and technologies when there are good reasons to do so. A per subscriber unit assessment formula for wireless fits within

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50/ *See, e.g.*, Petition for Reconsideration of Comcast Cellular Communications, Inc., CC Docket No. 96-115, filed May 26, 1998; Comments of the Cellular Telecommunications Industry Association, CC Docket No. 96-115, filed August 26, 1998, at 2-5; Reply Comments of Omnipoint Communications, Inc., CC Docket No. 96-115, filed July 6, 1998, at 5; Reply Comments of the Rural Cellular Association, CC Docket No. 96-115, filed July 6, 1998, at 3-6. *See also* Comments of Comcast Cellular Communications, Inc., CC Docket No. 96-61, filed September 29, 1997, at 3.

51/ *See, e.g.*, Comments of Comcast Cellular Communications Inc., on Personal Communications Industry Association's Petition for Forbearance For Broadband Personal Communications Services, WT Docket No. 98-100, filed August 3, 1998.

this approach and also is consistent with the Joint Board's most recent recommendation to the Commission on modifying the program.

V. A FIXED PERCENTAGE SOLUTION WOULD ALSO PROVIDE GREATER CERTAINTY AS A PERMANENT MECHANISM.

Although a fixed charge for wireless providers would greatly simplify universal service reporting, a fixed percentage solution is a second possibility that could be used to incorporate the critical elements of consistency and certainty. Establishing a fixed percentage of interstate wireless telecommunications revenues to be used as a multiplier on the USF Worksheet also would be an improvement over the process of making good faith estimates of the jurisdiction of wireless traffic.[52] Although it raises more implementation issues than a fixed charge, as the Commission recognized in the *Further Notice*, and would also offer less certainty to carriers and consumers than the fixed charge, a fixed percentage method would reduce competitive inequities among wireless carriers as compared to the use of differing allocation assumptions and methodologies.[53]

Any fixed percentage approach involves assumptions that the composition of wireless traffic is similar across competing wireless carriers in comparable markets with similar systems and operations.[54] Because this approach will require making assumptions concerning the

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[52] *Further Notice* at ¶ 18.

[53] *Id.*

[54] It also assumes that the jurisdictional composition of traffic reflects the jurisdictional composition of CMRS carrier revenues. Given the variety of CMRS carrier rate plans and the geographic makeup of CMRS service areas; it is not a foregone conclusion that

operations of similarly situated CMRS providers, some potential for competitive inequities, although less than with the good faith estimate approach, continues to exist. Thus, should the Commission adopt a fixed percentage approach, it must take steps to minimize the assumptions competing carriers must make. Specifically, under any revenue-based approach, the Commission must provide assistance to CMRS providers so that they may more simply and predictably identify end-user telecommunications revenues in a manner that promotes competitive neutrality. As discussed herein, this will require the Commission to make a variety of assumptions that may or may not reflect the operations of particular CMRS carriers.

A. The Commission Should Adopt Different Fixed Percentages for Categories of CMRS Providers Using the DEM Weighting Program as a Proxy.

The Commission tentatively concluded that it should establish different fixed percentages according to the type of CMRS provider because various categories of wireless providers appear to have substantially differing levels of interstate traffic.[55] In the *Further Notice*, the Commission observed that the use patterns of broadband PCS and cellular services do not appear to resemble those of analog SMR or paging services.[56] Accordingly, it is reasonable for the Commission to assume that interstate traffic levels are generally similar among competing carriers within the same category of CMRS provider.

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traffic studies are the most reasonable means to approximate the jurisdiction of CMRS revenues.

55/ *Further Notice* at ¶ 19.

56/ *Id.* at ¶¶ 20-21.

It is also reasonable for the Commission to use data submitted for purposes of the DEM weighting program to approximate the percentage of interstate revenues generated by broadband cellular and PCS providers. It is apparent, even before the issuance of the *Further Notice* in this proceeding, that the DEM weighting figure already had been used in estimates by some wireless carriers.[57] To be consistent, the Commission should continue to use data submitted for purposes of the DEM weighting program to generate a permanent interstate proxy for use by wireless providers. As the *Further Notice* observes, a 15% interstate traffic estimate likely is a conservative estimate of CMRS interstate traffic.[58]

Alternatively, the Commission could require CMRS carriers to adopt a common methodology to determine the percentage of interstate cellular and PCS revenues generated by wireless providers based on traffic as measured through designated trunk groups.[59] The process necessary to establish this methodology would involve directing either all carriers or a group of selected representative carriers to audit and classify traffic flowing between the CMRS provider and its incumbent LEC interconnector. Once the Commission had this information it could make the judgment whether these measurements should result in separate proxies for carriers operating in different regions. The resulting uniform percentage probably would be no more accurate as applied to a particular CMRS carrier's traffic over a particular time period than the use of DEM

57/ *See* Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated September 25, 1998.

58/ *Further Notice* at ¶ 13.

59/ *See* Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 23, 1998.

weighting as a proxy. While Comcast is interested in reviewing the suggestions of other parties regarding the challenge of deriving an appropriate percentage, pending a better approach, the Commission should prescribe a proxy percentage to calculate wireless provider contribution amounts.

B. The Commission Should Require Broadband CMRS Carriers to Report Interstate Percentages Using Major Trading Areas as a Common Market.

Any proxy for wireless jurisdiction allocation that is based on a percentage of interstate revenues must take into consideration not only the category of CMRS carrier, but the relevant markets in which the carrier operates. Some parts of the country experience a higher level of interstate traffic than others. For example, it is reasonable to expect that certain East Coast markets with major metropolitan areas near state borders, such as Washington, D.C., Philadelphia or New York, would experience a greater percentage of interstate calls on average than a rural RSA market in Montana.

Under the good faith estimate approach, wireless providers serving a wide range of markets had the ability to average down their percentage of interstate revenues by including all of their markets in their total telecommunications revenue calculations. Under the proposed fixed percentage approach, the Commission would apply a fifteen percent assessment across the board without a consideration of particular market characteristics. One way to deal with the real possibility of variation in characteristics is suggested in the *Further Notice* — allow CMRS carriers to file waiver requests for those markets where the interstate traffic varies significantly from the fifteen percent proxy.

For a permanent fixed percentage to yield consistent and certain results among broadband CMRS carriers, there must be a single specified definition of the appropriate market for purposes of universal service reporting. Comcast submits that the best solution is to require that each carrier file a Worksheet for each Major Trading Area ("MTA") in which it operates. As Comcast stated previously, the MTA is consistent with operational structures for the vast majority of wireless providers. It is sufficiently large so as not to disrupt the consolidated operations of most wireless providers, but would not discriminate against cellular and SMR carriers, or other providers with license areas based on MSAs, RSAs or Basic Trading Areas ("BTAs").[60]

Moreover, use of the MTA would be consistent with the Commission's method of defining markets for purposes of incumbent LEC-CMRS interconnection relationships and for determining what CMRS services constitute "interexchange" for purposes of Commission rate integration rules. In its *Local Competition Order*, the Commission defined the MTA as the local service area for calls to or from a CMRS network for purposes of incumbent LEC interconnection obligations and reciprocal compensation.[61] The Commission reasoned that the largest authorized wireless licensed territory served as the most appropriate market area for a wireless "local" service area.[62] Similarly, the Commission should adopt the MTA as the relevant

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60/ *Id.*

61/ *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16014 (1996).

62/ *Id. See also* Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as market for CMRS carriers, and Worksheet reporting should be MTA-by-MTA. By requiring CMRS carriers to file individual MTA Worksheets, the concern that carriers might consolidate low and high interstate volume networks to average down their contribution is minimized. A CMRS carrier would always have the option of filing a market-specific waiver of the interstate percentage proxy whenever it believed a waiver would be appropriate or necessary.

VI. THE PROCESS TO DERIVE AN ACCURATE TRAFFIC STUDY METHODOLOGY OR INDUSTRY MODEL IS NOT A GOOD USE OF COMMISSION OR INDUSTRY RESOURCES AND RUNS COUNTER TO CORE PRINCIPLES OF COMPETITIVE NEUTRALITY, CERTAINTY AND PREDICTABILITY.

Another possible approach to the issue of wireless carrier inability to easily capture and report jurisdictional revenues identified in the *Further Notice* is the development of a series of "simplifying assumptions" that would allow CMRS carriers to derive their own interstate revenues for universal service reporting.[63] While this approach might offer some modest improvement as compared to a good faith estimate, the process of developing and testing assumptions to be applied to periodic wireless traffic studies would be costly, time consuming and burdensome, both for the CMRS industry and for the Commission. Development of a series of simplifying assumptions is the surest path to spawning additional competitive inequities rather than eliminating them.

From its enormous efforts to date in developing its universal service high cost model, the

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Amended, Memorandum Opinion and Order, CC Docket No. 96-61, rel. December 31, 1998 at ¶ 2.

63/ *Further Notice* at ¶ 27.

Commission can appreciate the amount of joint industry and Commission effort and resources that must be expended to create a sufficiently granular predictive model. The task of developing wireless industry traffic study assumptions, while different, is nearly as complex. First, it would require establishing a reasonably precise reflection of CMRS market characteristics. To be precise enough to be useful, the methodology would have to utilize a number of variables and assumptions based upon each CMRS carrier's individual data collection procedures.

The problems with developing a representative traffic study model are not insignificant. For example, current systems used by wireless carriers only permit generalized tracking of mobile-to-land calls. Calls from land-to-mobile networks cannot be screened or tracked. Because cell sites and CMRS switches (which serve as potential points for tracking the origination of traffic) may cover and serve several states, assumptions based on traffic at these points in a wireless network are very imprecise and would not lead to an accurate measurement of interstate traffic. Even if call destinations could be tracked by monitoring trunk groups or by comparing the location of the originating cell or switch to the NPA-NXX for calls that are being routed to landline services, appropriate treatment for incoming calls and roaming calls still must be developed. In addition, assumptions regarding time periods for sampling calls, determinations of whether common intrastate and interstate calling patterns in particular MTA markets is justified, as well as the patterns of land-to-mobile and mobile-to-mobile traffic, would all be necessary components in developing a "simplified" wireless traffic study methodology.[64]

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[64] *See* Letter from James R. Coltharp, Comcast Corporation, to Magalie R. Salas, FCC, dated February 23, 1998.

Any reasonable traffic study model or methodology would have to focus on essential elements of how wireless carriers and markets operate. For example, to account sufficiently for differences among geographic markets, there would need to be separate assumptions for markets with presumably heavier interstate traffic and for those with presumably less interstate traffic based on factors that are common among each of those markets.[65] Even after creating a solution that accounts for relative differences in the composition of MTA traffic, a large number of key variables would remain. Failure to account for these variables would lead to inaccurate measurements of interstate traffic.

In the end, a methodology established as a permanent mechanism for wireless carriers to measure interstate traffic would not be any more precise than either the fixed charge or fixed percentage alternatives discussed above. The considerable time and resources that would be spent establishing a methodology would not lead to greater certainty for carriers and their customers. In fact, to the extent the methodology permits a wide range of possible assumptions, carriers would have an incentive to underreport, leading to inequities in contribution amounts — the very effect the Commission has tried to avoid by eliminating the good faith estimate approach.

Due to the incentive of wireless carriers to minimize their estimate of interstate revenues and the inadequacies of any methodology to minimize their ability to do so, wireless carriers that use a study method similar to that described by AirTouch to identify their interstate revenues

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[65] *See supra* discussion at Part V., B. (arguing that CMRS carriers should report using MTAs as a common market).

should not continue to do so if the Commission adopts a fixed charge or fixed percentage approach.[66] Allowing such studies would circumvent the purpose of a fixed charge or percentage — to treat all competing parties equitably. A traffic study should only be accepted if it is implemented uniformly by a carrier in each and every one of the carrier's MTAs. It would not be sufficient, for example, for a carrier to do a single study for Boise and then apply it to Boston. Further, unless the exact same simplifying assumptions apply in every one of the carrier's markets, the opportunity for underestimating interstate traffic remains a problem.

Furthermore, the Commission recognizes that there will be inaccuracies in classifying traffic when a call originates as intrastate but terminates as interstate (and *vice versa*) due to the customer crossing a state boundary or the need to establish the jurisdiction of a call to a person roaming out-of-state.[67] It is not reasonable to assume that these inaccuracies would cancel each other out in every market. As noted above, significant differences in market characteristics would need to be accounted for to have a reasonably accurate methodology. For these reasons, the Commission should not endeavor to develop, or allow wireless providers to use, a methodology based upon "simplified assumptions." If, however, the Commission does proceed in this direction, it should be cautious to avoid adopting assumptions that favor any particular size of CMRS provider.

66/ Under the AirTouch study method, a tracking system forwards data received from the originating switch to databases used for billing. These databases enable AirTouch to compare the originating switch location with the terminating area code. AirTouch then estimates the percentage of interstate airtime usage and then applies the percentage to an estimated level of total end-user revenues. *See Further Notice* at ¶ 38.

67/ *Further Notice* at ¶ 39.

VII. THE COMMISSION NEEDS TO CLARIFY ADDITIONAL ISSUES RAISED IN THE FURTHER NOTICE.

Under any revenue-based reporting approach other than gross revenues, the Commission must address the question of how wireless carriers are to derive end-user telecommunications revenues. In its *First Report and Order*, the Commission determined that end-user telecommunications revenues would be the basis for contributions to the universal service fund.[68/] As a result, the USF Worksheet requires carriers to segregate those revenues considered to be end-user telecommunications revenues and then apply an interstate jurisdiction factor.

In the instructions to the Worksheet, the Commission uses the Uniform System of Accounts ("USOA") as the basis to assist carriers in determining reportable end-user telecommunications revenues.[69/] Such references provide little guidance to CMRS providers because CMRS providers do not keep records in USOA accounts. As a result, CMRS providers are burdened with the task of determining what revenues are end-user telecommunications revenues. There is sufficient ambiguity on this point that the Commission recently announced that amounts assessed on end-users to recover universal service contribution amounts should be

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68/ *See First Report and Order*, 12 FCC Rcd at 9206-07. In doing so, the Commission generally accepted the Joint Board's recommendation to base contribution amounts on gross telecommunications revenues net payments to other carriers, refining the assessment base to include end-user telecommunications revenues. *Id.*; *see also, Recommended Decision,* 12 FCC Rcd at 495.

69/ *See* Division Announces Release of Universal Service Worksheet, FCC Form 457, *Public Notice*, CC Docket Nos. 97-21, 96-45, released July 31, 1998.

reported as end-user telecommunications revenues.[70] It also determined that inside wire revenues should not be treated as telecommunications revenues.[71]

The Commission should take this opportunity to further clarify this issue. Wireless carriers often bundle telecommunications services with information services, customer handsets and other non-telecommunications services. Because universal service contributions are based on telecommunications revenues only, wireless providers must deduct revenues from non-telecommunications services from their gross revenues to calculate contribution amounts. Comcast submits that the fair market value of bundled non-telecommunications services should be deducted from applicable service plan revenues. Wireless providers would back-out non-telecommunications features and equipment uniformly based on their stand-alone fair market value.[72]

VIII. CONCLUSION

Comcast strongly supports both the Commission's interim action and its inquiry into appropriate methodologies for CMRS universal service reporting. Comcast consistently has advocated methodologies that promote predictability and competitive neutrality as among competing CMRS carriers. Either a fixed charge approach based upon a carrier's per subscriber

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[70] *Id.* (adding new line 48 to the Worksheet).

[71] Federal-State Joint Board on Universal Service, *Sixth Order on Reconsideration*, CC Docket No. 96-45, FCC 98-206, ¶ 5, rel. November 17, 1998.

[72] *See* Letter from Randall Coleman, Cellular Telecommunications Industry Association, to Jeanine Poltronieri, FCC, dated August 21, 1997.

unit count, or a fixed percentage of interstate traffic proxy, would have these effects. Comcast believes that the fixed charge approach, in the long run, would be the simplest method to create, maintain and monitor. By monitoring CMRS revenues, the Commission can easily assure that CMRS is paying its share of the overall universal service contributions. Comcast urges the Commission to act quickly and decisively to adopt a going forward mechanism or proxy that encourages confidence in the fairness of the program.

Respectfully submitted,

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January 11, 1999

CERTIFICATE OF SERVICE

I, Joslin Arnold, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 11th day of January, 1999, a copy of the foregoing "Comments of Comcast Cellular Communications, Inc." was sent by hand delivery and by first-class mail, as indicated by an asterisk, to the following:

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